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F.O. 371

1947

PALESTINE

Fine No. 2671

CLOSED UNTIL

1978

61916

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Registry E 26/1/26/1/81
Number

FROM

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Mr. Evans

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(minicipal mand menti suggested by the thigh Commitment water would missoure the law. There are really this of his objections a set seally list of the Order in Conneil as it stands, (a) the inconvenience and difficulty of Larmy a prove that a person is a gent or a Postern before he can a convicted of an offense and (b) that it makes only gents and Parlims repeatively junichable for the objectionable action here the some and possibly middle and persons of other selegions, and possibly with an equally distinting effect.

The ruggested amending Order in Council would need

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to the objections. The suggested regulation, which I agree could be made under Section 2 of the Order in Council, would as by mut objection (a) and a regulation of meet (b) also would I think be ultra voies. I agree with Dr. Trafford smith that the ultra voies of regulation suggested in his letter is not very suitable but a less micht provoking formula might be devised.

However / muit point out that The appear & he the first case in which difficulty has anier since the Order in Council came in a force in game 1931 and I am rates inchnied a agree with the Beeley that, that, though it may be inconvenient to address evidence a show that a person is a gew or a Postem, the difficulties of proof should not in most cases he insuperable. Therefore, Dough I agree that the Order in Caucil in its present form is not extinity satisfaction, I satisfacted which whether there is a sufficient case to justify its amendment.

My spin ion Resepose ii Rad if after further consideration the Wigh Commissioner and the Glorial office decide Ral an amend ment is necessary they should first consider whether a satisfactory regulation under Section 2 of the Order in Council can be devised and, if not, prepare a draft amendeng Order in Council.

W.V. J. EVANS 1 Phil 1947.

Draft submilled

H13eely 87,

COPYRIGHT OF THE PUBLIC RECORD OFFICE, LONDON

Reference:- FO 371 / 61916

Ento



75227/46.

Downing Street, S. V.1.

Ith March, 1947.

E 267#

Dear Baster

Would you please refer to Rendel's letter of the 14th May, 1931 (E.2447/20/31) and related correspondence, concerning the Palestine (Western or Wailing Wall) Order in Council, 1931 (S.R. and O, 1931, No. 488).

I enclose a copy of a savingram from the High Commissioner concerning a prosecution recently brought under paragraph B(5) of Schedule I to the Order in Council. As a result of this case the High Commissioner suggests certain amendments to the terms of the Order in Council. We have consulted our Legal Advisers, who point out that the High Commissioner is given power to make regulations by Section 2 of the Order, with the approval of the Secretary of State. "to give effect to the provisions" contained in to meet the point raised in the savingram by making a regulation to say that, for the purpose of any proceedings under paragraph (5) of Schedule I, anyone blowing a ram's horn should be presumed to be a Jew unless he proves the contrary, and anyone taking part in the Zikr ceremony should be presumed to be a Moslem unless he proves the contrary, there might be an element of levity about such a provision which would be unsuited to the matter in hand, unless it is

/thought

C. J. BAXTER, ESq. CMG.MC.,

thought that a provision of such absolute impartiality would be valuable as establishing once more the good faith of the mandatory Power. Otherwise an Order in Council would be necessary to give effect to the amendments now suggested.

Before taking any further action we should be grateful for your observations.

Yours sureity Traffadhuth

27 MAR 1997

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SF/277/42.

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SAVING.

From the High Commissioner for Palestine.

To the Secretary of State for the Colonies.

Date.....17.12.46...

No......1889......Saving. SECRET.

Para.B(5) of Schedule I to the Palestine (Western or Wailing Wall) Order-in-Council 1931 provides that

"The Jews shall not be permitted to blow the ram's horn (Shofar) near the Wall nor cause any other disturbance to the Moslems that is avoidable etc."

- 2. In a prosecution brought against a certain Moshe Yusef Karaewany the Relieving President of the District Court of Jerusalem held that a condition of successful prosecution for an offence under this para. must be proof that the accused person was a Jew. A copy of the judgment is enclosed.
- J. I am advised that the decision of the Relieving President is a correct interpretation of the law. It however gives rise to practical inconvenience, and it will rpobably result in great difficulty being experienced in future in successfully prosecuting breaches of this provision of the Order-in-Council.
- 4. Since the political consequences and the results to public security of breaches of the status quo and particularly of the blowing of the Shofar at the Wailing Wall, are always liable to be serious, and particularly so in times of communal tension, I suggest for your consideration the desirability of amending this provision of the Order-in-Council so as to make it an offence for any person, irrespective of his race or religion, to blow the Shofar near the Wall.
- 5. Para.B(5) of Schedule I to the Palestine (Western or Wailing Wall) Order-in-Council 1931 also provides that

"The Moslems on the other hand shall not be permitted to carry out the Zikr ceremony close to the Pavement during the progress of the Jewish devotions or to cause annoyance to the Jews in any other way."

- 6. Similar difficulty is likely to arise in establishing that an offender against this provision is a Moslem. If you decide that this para. should be amended, I suggest that the occasion be taken to constitute it an offence for any person, whether Moslem or other, to carry out the Zikr ceremony close to the Pavement during the progress of the Jewish devotions or to cause annoyance to the Jews in any other way.
- 7. There are of course other references in the Order-in-Council to "Jews" and to "Moslems", but as these provisions are of an empowering nature, I am advised that no difficulty is likely to arise if reference to "Jews" and "Moslems" elsewhere than in para. B(5) of Schedule I are left unchanged.

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| 1 2 3 * 5 6 | Reference:- FO 371 / 61916

Criminal Case No. 192/46.

IN THE DISTRICT COURT OF JERUSALEM.

BEFORE: His Honour Judge L.A.W. Orr - R/President. IN THE CASE OF:

Attorney-General

Moshe Yosef Karaewany Juvenile Accused.

Statement of Offence: Blowing the ram's horn (Shofar), contrary to section 5(B) of Schedule 1 of the Palestine (Western or Wailing Wall) Order-in-Council, 1931.

JUDGMENT.

Although Mr. Meridor's first point is interesting I do not think it is necessary to consider it, nor do I think it is desirable to do so having regard to the fact that I am sitting as a Juvenile Court and it would not be in the interest of the child to have the publicity which would follow upon a decision by me on such a point. It is perfectly clear that the prosecution has not provided its case as if there is an offence, it is an essential condition of it that the accused must be a Jew and the prosecution has not proved that this bov is a Jew. this boy is a Jew.

I acquit the accused of the charge and order him to be set at liberty.

DELIVERED this 18th of November, 1946.

(Sd) L.A.W. ORR.

R/President.

Registry No.E 2671/2671/31

Confidential.

Draft. Cee.

Mr. Trafford Smith, Colonial Office.

From:
Mr. ABaxter.

4.13. 8

OUT FILE

FOREIGN OFFICE, S.W.l. 14th April, 1947.

Dear Trafford Smith,

May I refer you to your letter (75227/46) of the 25th March, concerning the Palestine (Western or Wailing Wall) Order in Council, 1931

It appears that the case reported in the High Commissioner's Saving Telegram No. 1889 is the first in which difficulty has arisen since the Order in Council came into force in June, 1931. It seems to us that, though it may be inconvenient to adduce evidence to show that a person is a Jew or a Moslem, the difficulties of proof should not in most cases be insuperable. Therefore, though Weagree that the Order in Council in its present form is not entirely satisfactory, Werather doubt whether there is a sulficient case to justify its amendment.

If, however, you decide after further consideration that an amendment is necessary, you may wish to take the following comments into account.

There are apparently two objections to Schedule I (5) of the Order in Council as it stands: (a) the inconvenience and difficulty of having to prove that a person is a Jew or a Moslem before he can be convicted of an offence; and (b) that the order makes only Jews and Moslems respectively punishable for the acts defined, whereas those acts might equally well be committed by mischievous persons of other religions, possibly with an equally distracting effect.

The amending Order in Council suggested

by /

by the High Commissioner would meet both objections. The alternative suggestion for a regulation "to give effect to the provisions" of the existing Order, would only meet objection (a), and a regulation to meet (b) also would, f think, be ultra vires. Wagree with you that the actual form of regulation suggested in your letter would not be altogether suitable, but it might be possible to devise an alternative formula and we would suffer that - Our suggestion, therefore, is that if you

decide that the existing order must be amended, you might first consider whether a satisfactory regulation could be drafted or, if not, prepare a draft amending Order in Council will presumably be necessary.

MM 10/4

Yours sincernly

(Sqd.) P. Garran for (C.w. Barten)

OUT FILE

ğ .o.

FORETON OFFICE, S.W.1.

(E.2671/2671/31). Confidential. 14th April, 1947.

cear Trafford Smith,

May I refer you to your letter (75227/46) of the 25th March, concerning the Palestine (Western or sailing sall) Order in Council, 1931.

It appears that the case reported in the High Commissioner's Saving Telegram No.1869 is the first in which difficulty has arisen since the Order in Council came into force in June, 1931. It seems to us that, though it may be inconvenient to adduce evidence to show that a person is a Jew or a Moslem, the difficulties of proof should not in most cases be insuperable. Therefore, though we agree that the Order in Council in its present form is not entirely satisfactory, we rather doubt whether there is a sufficient case to justify its amendment

If, however, you decide after further consideration that an amendment is necessary, you may wish to take the following comments into account.

There are apparently two objections to behadule I (b) of the Order in Council as it stands: (a) the inconvenience and difficulty of having to prove that a person is a Jew or a Moslem before he can be convicted of an offence; and (b) that the order makes only Jews and Moslems respectively punishable for the acts defined whereas those acts might equally well be committed by mischievous persons of other religions, possibly with an equally disturbing effect.

/The

Trafford-Smith, Esq., Colonial Office.

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The amending Order in Council suggested by the High Commissioner would meet both objections. The alternative suggestion for a regulation "to give effect to the provisions" of the existing Order, would only meet objection (a), and a regulation to meet (b) also might be ultra vires. We agree with you that the actual form of regulation suggested in your letter would not be altogether suitable, but it might be possible to devise an alternative formula and we would suggest that if you decide that the existing order must be amended, you might first consider whether a satisfactory regulation could be drafted. If not, then a draft smending Order in Council will presumably be necessary.

Yours sincerely

(Sqd) P. Garram

Par (O. Bexter).

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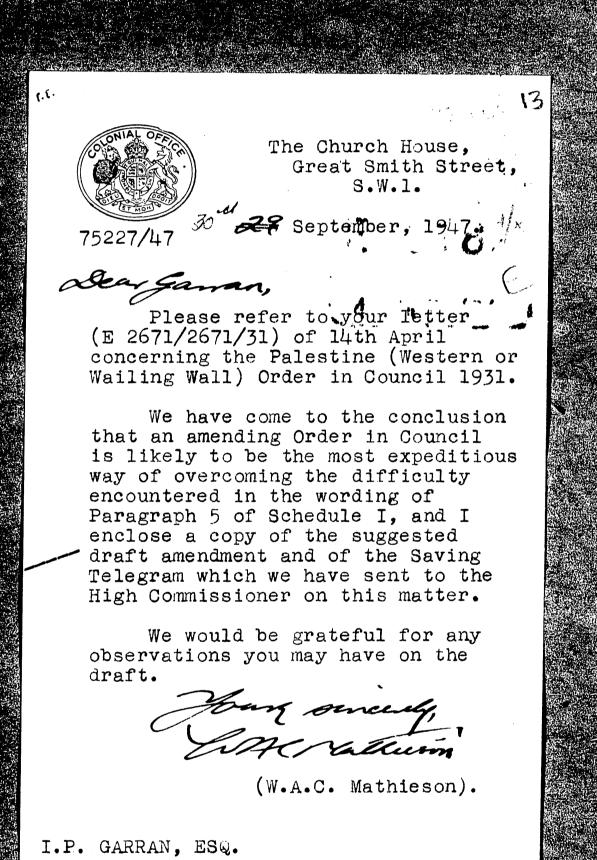
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PALESTINE

(Action completed)

Next Paper

from m Both.



Saving.

the Secretary of State for the Colonies. PALUSTINE. To the Officer Administering the Government of...

30 September, 1947.

221 SECRET Saving.

Saving Telegram No. 1389.

Palestine (Western or Wailing Wall) Order in Council, 1931.

I agree that it is desirable in future to ensure successful prosecution for breaches of this Order-in-Council and to avoid recurrence of the difficulty of establishing religious persuasion which was encountered under the present wording of Paragraph 5 of Schedule I in the case of Moshe Yusef Karaewany.

An amending Order in Council appears to be the most satisfactory method of rectifying the position and a draft amendment to Faragraph 5 of Schedule I prepared by my legal advisers is enclosed for your consideration.

/Though

75227/47

14

Saving.

To the Officer Administering the Government of PALUSTINE.

Date 30 September, 1947.

No. 22/ Saving. SECRET

Saving Telegram No. 1389.

Palestine (Western or Wailing Wall) Order in Council, 1931.

I agree that it is desirable in future to ensure successful prosecution for breaches of this Order-in-Council and to avoid recurrence of the difficulty of establishing religious persuasion which was encountered under the present wording of Paragraph 5 of Schedule I in the case of Moshe Yusef Karaewany.

2. An amending Order in Council appears to be the most satisfactory method of rectifying the position and a draft amendment to Faragraph 5 of Schedule I prepared by my legal advisers is enclosed for your consideration.

Though

15

Though Schedule I of the original Order of 1931 evidently reproduces the actual conclusions of the Commission appointed by the Council of the League of Nations, there would seem to be no objection to the widening of the terms of their conclusion in this respect. You will, of course, note that the draft keeps as close as possible to the original wording.

3. I would be grateful for your observations in due course.

SECER.

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Reference:- FO 371 61616

Section 1

At the Court at

the day of 1947.

Present

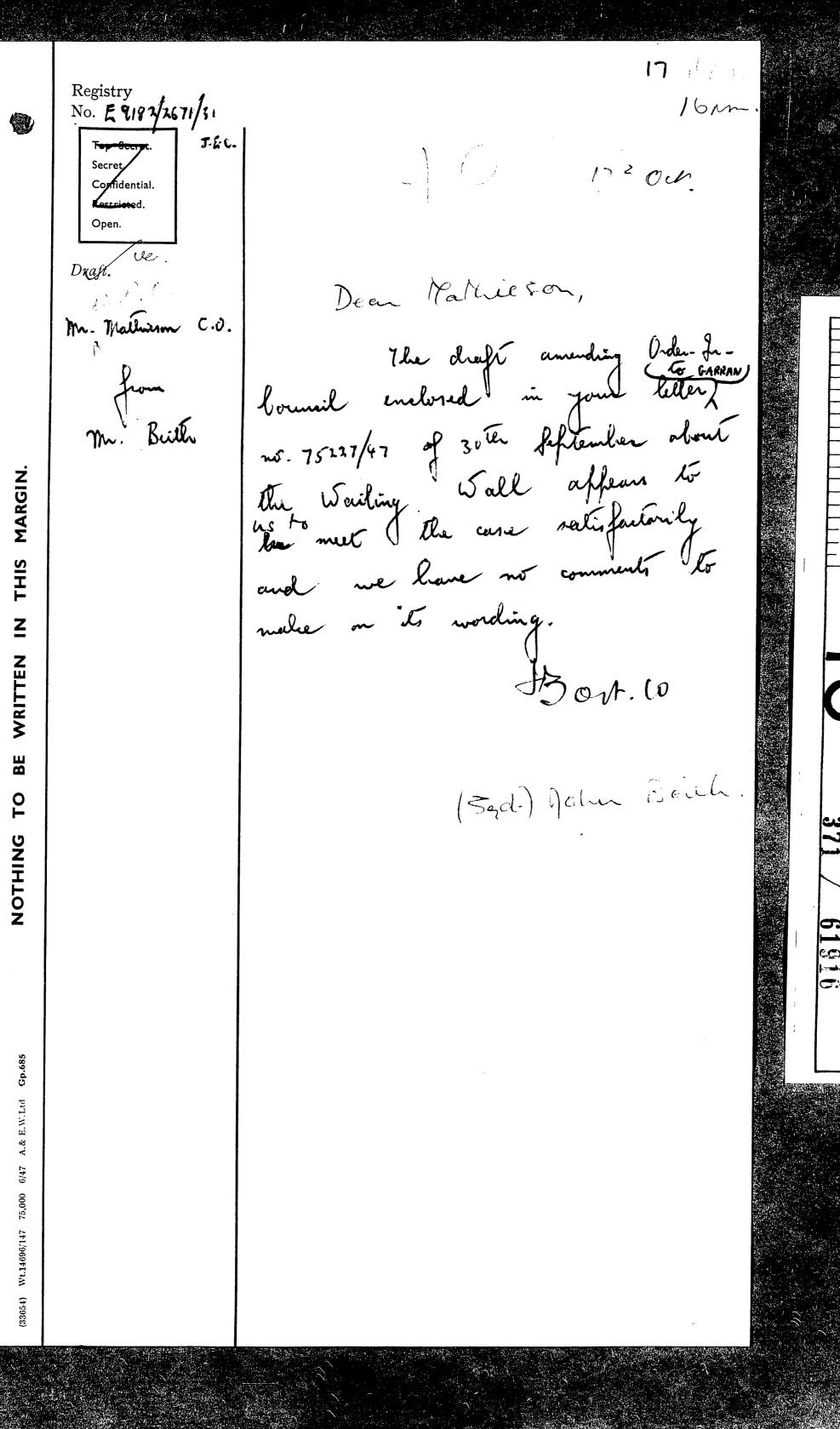
WHEREAS it is desirable to amend the provisions of the Palestine (Western or Wailing Wall) Order in Council, 1931 (bereinafter called "the principal Orde,") in manner hereinafter appearing:

NOW, THEREFORE, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of His rivy Council, to order, and it is hereby ordered as follows:-

- 1. This Order may be cited as the Palestine (Western or Wailing Wall) Order in Council, 1947, and shall be read as one with the principal Order.
- 2. In place of the provisions contained in sub-paragraph (5) of paragraph B of Schedule 1 to the principal Order the following provisions shall have effect, namely -

No person shall blow the ram's horn (Shofar) near the Western or Wailing Wall nor cause any other disturbance to the Moslems that is avoidable; and no person shall carry out the Zikr ceremony close to the Pavement in front of the Wall during the progress of the Jewish devotions, nor cause annoyance to the Jews in any other way.

3. This Order shall come into operation on a day to be fixed by the High Commissioner by Proclamation in the Gazette.



.

17th October, 1947.

FOR ION OFFIC . S.W.1

(3 9182/2671/31)

Dear Martieson,

The drast amending Order-In-Council enclosed in your letter to Garran Mo. 75227,47 of 30th Ceptember about the Wailing Wall appears to us to meet the case satisfactorily and we have no comments to make on it working.

Tours simeeroly

(59d.) John Baith

(J. G. S. Beith)

W. A. C. Mathies n, Fsq., M.B.E., Colonial Office.